



MARICOPA COUNTY MERIT SYSTEM COMMISSION

APPELLANT'S GUIDE

This guide is intended to explain Maricopa County's Employee Appeal and Hearing Process for those persons who have filed (or may file) an appeal.

MATTERS WHICH MAY BE APPEALED

Employees in the classified service who have attained regular status may appeal a dismissal, involuntary demotion or suspension. An employee who has been subject to a reduction-in-force (RIF) may file an appeal only on the grounds that the calculation of the employee's retention points was inaccurate and resulted in that employee being selected for separation before another.

APPEALS

The appeal must be in writing and filed with the Human Resources Director within ten (10) business days following the date of personal delivery or certified mailing of the final decision of the appointing authority. An appeal must state the facts upon which it is based and the action requested of the Merit Commission, hereafter referred to as the Commission.

TERMS

The following terms, while not prepared by an attorney, may be useful to the lay person. The Merit Systems Administrator or the Hearing Officer may be consulted for further assistance.

APPEAL - A written request filed with the Human Resources Director on behalf of the Merit Commission to set aside a demotion, suspension, dismissal or RIF, usually resulting in a hearing.

APPELLANT - The employee who filed the appeal.

BURDEN OF PROOF - A term referring to the party with the responsibility of presenting evidence to prove its position.

CLOSED HEARING - Only the parties, their legal representatives, the Hearing Officer, Commission member(s) or Court Reporter may attend the hearing.

COMMISSION - The Maricopa County Employee Merit System, Judicial Merit System and Law Enforcement Officers' Merit System Commission.

DEPOSITION - A formal interview of witnesses who may not be available at a hearing due to illness or distance. These are normally done in front of a Court Reporter and under oath.

HEARING - A quasi-judicial proceeding resulting from an appeal and leading to a Hearing Officer's written recommendation to the Commission.

HEARING OFFICER - One of a group of persons designated by the Commission to act as its representative in appeal hearings. The Hearing Officer rules on motions, takes testimony, accepts evidence and makes a report to the Commission which includes Findings of Fact, Conclusions of Law and Recommendations.

MOTION - A request made to the Hearing Officer for a ruling or order on a specific issue related directly to the appeal. Some examples would be: motions by the respondent to dismiss the appeal, motion by either party to preclude certain evidence.

OPEN HEARING - Anyone may attend the hearing (same as public hearing).

RESPONDENT - The appointing authority of the County agency or agencies.

RULE FOR EXCLUSION OF WITNESSES - The requirement that all other witnesses be excluded from the hearing room while another witness is testifying. This does not include the appellant or one designated representative of the respondent.

STIPULATION - An agreement that has been reached by both parties.

SUBPOENA - A written legal order directing a person to appear at a hearing to testify or produce evidence.

SUBPOENA DUCES TECUM - A subpoena for documents.

TRANSCRIPT - A verbatim report of the proceedings of the hearing as prepared by and available from the Court Reporter.

TIME OF HEARING

The initial hearing date is set within twenty (20) calendar days after receipt of an appeal request unless the time is extended by mutual consent of the Appellant, Respondent and Hearing Officer. Written notice of the time, date, place of the hearing and the name of the Hearing Officer will normally be mailed by the Merit Systems Administrator to arrive at least seven (7) days before the date of the hearing.

HEARING

Each hearing is private unless the appellant requests an open hearing. Parties may represent themselves or be represented by legal counsel of their choosing (and funded by themselves), or lay representatives. Arizona State University Law School Legal Clinic (602 965-6968) or the Bar Association Lawyer Referral Service (602 257-4434) may be able to assist if an attorney is wanted. Technical rules of evidence do not apply to the proceedings, except that irrelevant, immaterial or unduly repetitious evidence or evidence protected by the rules of privilege recognized by law may be excluded. The burden of proof shall be on the department which took the disciplinary or RIF action. The party with the burden of proof is required to present its case first. If the party with the burden of proof is unable to prove the allegations at the end of its evidence, motions to dismiss the appeal may be entertained by the Hearing Officer. All testimony at the hearing is recorded by a court reporter. Transcripts may be purchased from the court reporter.

HEARING OFFICER

The appeal is assigned to a Hearing Officer who is the authorized representative of the Commission and empowered to grant or refuse exten-

sions of time to conduct the hearing and to provide limited advice to the parties involved regarding the appeal if the advice does not conflict with the Hearing Officer's role as a neutral party. It may be considered inappropriate for either party to consult with the Hearing Officer privately, due to the nature of the relationship. Either party may submit a written request for change of Hearing Officer. The request must state the reasons and should be submitted to the Commission in care of the Merit Systems Administrator. A change in the Hearing Officer normally will **not** be granted by the Commission **unless** a clear case of bias, or prejudice, can be shown.

CONTINUANCES

Any parties wishing to have the time and/or date of the hearing changed, must contact the Hearing Officer. The Hearing Officer has the authority to grant or deny requests for continuances and to set a hearing date if the parties are unable to arrange a mutually agreeable time. If agreement cannot be reached, each party will be expected to attend on the established date. Even when both parties agree, Hearing Officer approval is necessary for all continuances. It is the Commission's policy that hearings be completed as rapidly as possible. Any party who has subpoenaed witnesses has the responsibility of notifying them of the continuance. New subpoenas for persons previously subpoenaed will not be issued without justification in writing to the Merit Systems Administrator. Such subpoenas will be issued only with the approval of the Administrator.

DEFAULT HEARINGS

In the event that a party is over thirty (30) minutes late for the appeal hearing or is not present for a scheduled hearing, testimony may be taken on the record verifying or denying the allegations in the letter of discipline. If such testimony is taken, the Hearing Officer, from that testimony, shall prepare his/her Findings of Fact, Conclusions of Law and Recommendations for submission to the Commission.

SUBPOENAS

When requesting subpoenas, the party must prepare a letter containing names, addresses and contact phone numbers of those persons to be subpoenaed. Requests to issue subpoenas shall be received by the Merit Systems Administrator no later than eight working days prior to the scheduled hearing. When valid subpoena requests are received, the Merit Systems Administrator requests that the Clerk of the Board of Supervisors issue the subpoenas. When prepared, the subpoenas are delivered by a Deputy Sheriff. Persons not responding to Board issued subpoenas are subject to the same penalties imposed on those who do not respond to subpoenas issued by a Court of Law (ARS§11-218).

If a non-County witness is subpoenaed upon the request of either party, any fees or mileage shall be paid by the party requesting the witness. Subpoenaed County employees shall be paid their base rate of pay. Fees and mileage may be paid to a non-County employee witness subpoenaed by the Hearing Officer or the Commission upon presentation of a claim. Mileage should be paid at the current County reimbursement rate. Non-County employee witnesses subpoenaed are entitled to the same fee as that allowed witnesses in civil cases in courts of record.

DEPOSITIONS

If a witness does not reside within the County or within 100 miles of the place where the hearing is to be held, is out of state, or is too infirm

to attend the hearing, parties can, at their own expense, have a deposition taken and used at the time of the hearing if the witness cannot take the stand.

PROPOSED FINDINGS OF FACT

Both the appellant and respondent may file proposed findings of fact in writing with the Hearing Officer following the conclusion of the hearing. The Hearing Officer and Commission will include a ruling on the proposed findings in the written findings.

HEARING OFFICER RECOMMENDATIONS

After the hearing is completed, the Hearing Officer will prepare Findings of Fact, Conclusions of Law and Recommendations. Copies will be sent to both the Appellant and Respondent. Both parties shall have ten (10) business days from the receipt of the Hearing Officer's Report to file with the Commission any written objections (not post-hearing evidence) they might have concerning the Hearing Officer's Report. Each party must serve a copy of the written objections upon the other interested parties.

WITHDRAWAL OF APPEAL

The Appellant may submit a written request to withdraw an appeal at any time prior to the decision by the Commission.

DECISION BY THE MERIT COMMISSION

The Commission will review the Hearing Officer's Report and any written objections by Appellant and Respondent. The Commission may adopt the Hearing Officer's Report in its entirety, or modify it or may itself decide the case upon the record, including the transcript with or without taking additional evidence. Both parties will receive written notice of the Commission's decision. The Commission has the power to direct appropriate remedial action and does so after taking into consideration just and equitable relief to the employee and the best interest and effectiveness of the County and the public.

COMPLIANCE OF APPOINTING AUTHORITY

The findings and decisions of the Commission are final and subject only to administrative review by the Superior Court as provided in ARS §12-901 et seq. The appointing authority has thirty-five (35) days from the date of the decision of the Commission to either file for an administrative review or to take such measures as are necessary to comply with the decision of the Commission.

REPRISALS

An Agency shall take no disciplinary or punitive action against an employee, nor impede or interfere with the exercise of the employee's right of review, appeal or of any other employee right under the Resolution of these Rules.

For further information contact:

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Human Resources Department
Recruiting & Selection Division
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